

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE GUARDIANSHIP AND CONSERVATORSHIP OF
ALFONSO M. MARTINEZ, MINOR CHILD/EMANCIPATED.

HENRY M. MARTINEZ JR.,
Petitioner/Appellee,

v.

ALFONSO M. MARTINEZ,
Respondent/Appellant.

No. 2 CA-CV 2020-0001
Filed July 20, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. PG34721
The Honorable Kenneth Lee, Judge

APPEAL DISMISSED

COUNSEL

Law Office of Stephen P. Waitt, Tucson
By Stephen P. Waitt
Counsel for Petitioner/Appellee

Alfonso M. Martinez, Tucson
In Propria Persona

IN RE GUARDIANSHIP & CONSERVATORSHIP OF MARTINEZ
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

E P P I C H, Presiding Judge:

¶1 Alfonso Martinez appeals from the trial court's November 20, 2019 order denying his motion to reconsider its earlier rulings in this probate matter. Because Alfonso did not timely file a notice of appeal, we lack jurisdiction and dismiss the appeal.

Factual and Procedural Background

¶2 In January 2018, Henry Martinez filed a petition seeking, among other things, the trial court's approval of a final account settlement and distribution in a probate matter. On April 19, 2019, the court entered a final judgment in the matter pursuant to Rule 54(c), Ariz. R. Civ. P., finding that Martinez had not been prejudiced by an alleged lack of notice of certain proceedings.

¶3 Over the ensuing months, Alfonso filed a series of motions urging the trial court to reconsider its rulings, suggesting the court had not adequately considered the notice issue. First, on May 3, he filed a motion to reconsider, which the court denied on June 10. Then, on September 10, he filed a "Motion to Vacate Ruling on April 12, 2018," which the court denied on October 11, treating it as another motion to reconsider. Finally, on November 1, he filed another "Motion to Vacate Ruling on April 12, 2018," which the court similarly denied on November 20. Alfonso then filed a notice of appeal on December 4, appealing this last denial.

Jurisdiction

¶4 Henry contends that Alfonso has not filed a timely notice of appeal in this matter and his appeal should be dismissed on that basis. "The right to appeal is strictly statutory." *State v. Berry*, 133 Ariz. 264, 267 (App. 1982). To appeal a judgment in a civil case, a party must generally file a notice of appeal "no later than 30 days after entry of the judgment from which the appeal is taken." Ariz. R. Civ. App. P. 9(a). The denial of a motion for reconsideration might be appealable in certain instances as a "special order made after final judgment," A.R.S. § 12-2101(A)(2), but such

IN RE GUARDIANSHIP & CONSERVATORSHIP OF MARTINEZ
Decision of the Court

an order must raise “different issues than those that would be raised by appealing the underlying judgment.” *In re Marriage of Dorman*, 198 Ariz. 298, ¶ 3 (App. 2000). Moreover, filing a motion for reconsideration “will not extend the time within which a notice of appeal must be filed.” Ariz. R. Civ. P. 7.1(e)(3); *Munger Chadwick, P.L.C. v. Farwest Dev. & Constr. of the Sw., LLC*, 235 Ariz. 125, ¶ 4 (App. 2014); *see also* Ariz. R. Civ. App. P. 9(e)(1) (listing time-extending motions).

¶5 Here, the final, appealable order entered on April 19, 2019, was the last appealable order entered in the case, because none of Alfonso’s post-judgment motions raised issues he could not have raised in an appeal of that order. Alfonso did not file his notice of appeal within thirty days of that order, and the motion to reconsider he filed on May 3 did not extend his time to file the notice of appeal. His later motions re-urging the court to revisit its earlier rulings also did not extend his time to appeal. *See James v. State*, 215 Ariz. 182, ¶ 12 (App. 2007) (motion to vacate judgment not a time-extending motion). Therefore, the notice of appeal filed in December was several months too late. Because Alfonso did not timely appeal, we lack jurisdiction. *See id.* (timely notice of appeal is jurisdictional).¹

Disposition

¶6 The appeal is dismissed.

¹We need not address Henry’s contention that the time to file a notice of appeal began to run upon the trial court’s filing of a previous order in August 2018.